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COMPANY LLC, CALIFORNIA RESOURCES
CORPORATION, CHEVRON U.S.A. INC.,
FREEPORT-MCMORAN OIL & GAS LLC, LINN
ENERGY HOLDINGS LLC, and MACPHERSON OIL
COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR BIOLOGICAL
DIVERSITY, and SIERRA CLUB, non-
profit corporations,

Petitioners,

vs.

CALIFORNIA DEPARTMENT OF
CONSERVATION, DIVISION OF OIL,
GAS, AND GEOTHERMAL
RESOURCES; and DOES 1 through 20,
inclusive,

Respondents.

AERA ENERGY LLC, BERRY
PETROLEUM COMPANY LLC,
CALIFORNIA RESOURCES
CORPORATION, CHEVRON U.S.A.
INC., FREEPORT-MCMORAN OIL &
GAS LLC, LINN ENERGY HOLDINGS
LLC, and MACPHERSON OIL
COMPANY,

Respondents-in-Intervention.

Case No. RG15769302

Assigned for all purposes to the Hon. Robert B.
Freedman, Dept. 20

**DECLARATION OF JOHN MARTINI IN
SUPPORT OF OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION BY
AERA ENERGY LLC, BERRY
PETROLEUM COMPANY LLC,
CALIFORNIA RESOURCES
CORPORATION, CHEVRON U.S.A. INC.,
FREEPORT-MCMORAN OIL & GAS LLC,
LINN ENERGY HOLDINGS LLC, AND
MACPHERSON OIL COMPANY**

*[Opposition to Motion for Preliminary
Injunction and Declarations, filed concurrently;
Proposed Order, lodged concurrently]*

Date: July 2, 2015
Time: 9:00 a.m.
Dept.: 17

Action Filed: May 7, 2015
Trial Date: None set

1 I, John Martini, declare:

2 1. I am Manager, EH&S and Government Affairs at Freeport-McMoRan Oil & Gas LLC
3 ("FM O&G"). As such, I am familiar with the oil and gas operations of FM O&G, including
4 underground injection well operations and operations at oil fields in various locations in California,
5 including the Arroyo Grande, South Belridge, Cymric, Inglewood, Lompoc, McKittrick, Midway
6 Sunset oil fields. I make this declaration in support of Intervener's Opposition to Petitioners' Motion
7 for Preliminary Injunction. I have personal knowledge of the facts set forth in this declaration, except
8 where otherwise indicated, and if called to testify, I could and would competently testify to them.

9 2. FM O&G engages in substantial oil and gas production in California. FM O&G is one
10 of the leading producers of oil and gas in California, with 2014 average net daily oil-production of 37,
11 623 barrels of crude oil, 9,748,767 cubic feet of natural gas (9.7 MMcfd), and 469 barrels of natural
12 gas liquids.

13 3. FM O&G currently employs four-hundred and seventy one (471) people in California as
14 part of its oil and gas operations (excluding contractors and temps). FM O&G also works with
15 approximately 895 contractors in California to support its oil and gas operations.

16 4. As part of its substantial oil and gas operations, FM O&G operates Class II underground
17 injection wells for disposal and enhanced oil recovery well operations. Class II underground injection
18 wells are an integral part of FM O&G's oil and gas operations in California. In many cases, these Class
19 II injection wells have been operating for decades. FM O&G currently holds a number of Project
20 Approval Letters (PAL) for Class II injection operations. Individual well permits and injection
21 operations are conducted pursuant to the conditions of these PALs, or other permit specific conditions
22 as issued by California Department of Conservation, Division of Oil, Gas, & Geothermal Resources
23 (DOGGR). While some of the project approvals have been issued directly to FM O&G, many of the
24 project approvals were transferred to FM O&G pursuant to the acquisition of Plains Exploration &
25 Production Company (PXP). FM O&G's injection operations currently operate under the terms of
26 various project approvals that were issued between 2005 – 2014. Several of these approvals were
27 updated from previous approvals issued by DOGGR.

28 5. FM O&G has a property interest in continued oil and gas production supported by

1 underground injection activities. FM O&G's underground injection activities are necessary for oil and
2 gas production at the Arroyo Grande, South Belridge, Cymric, Inglewood, Lompoc, McKittrick,
3 Midway Sunset oil fields. Without these underground injection wells, FM O&G would have to cease
4 significant oil and gas operations in California, including at the Arroyo Grande, South Belridge,
5 Cymric, Inglewood, Lompoc, McKittrick, Midway Sunset oil fields.

6
7 6. In California, Class II injection wells are regulated by DOGGR pursuant to a
8 Memorandum of Agreement ("primacy agreement") between DOGGR and the U.S. Environmental
9 Protection Agency ("EPA"). Under the primacy agreement, DOGGR is tasked with ensuring that
10 potential underground sources of drinking water are protected in compliance with the federal Safe
11 Drinking Water Act ("SDWA").

12 7. FM O&G operates its Class II injection wells in accordance with the project approval
13 and as applicable well specific permit conditions established by DOGGR. FM O&G has never been
14 subject to an enforcement order from DOGGR for contamination of drinking water supplies caused by
15 underground injection activities.

16 8. Since 1983, when DOGGR acquired primacy over the UIC program, DOGGR has been
17 approving certain Class II underground injection projects with the understanding that the boundaries for
18 aquifers exempted by the U.S. EPA were adjusted as the productive limits of the field were revised
19 based on updated geologic information. Additionally, conflicting versions of the operative primacy
20 agreement between DOGGR and U.S. EPA led to confusion over whether 11 aquifers in California had
21 been formally exempted by U.S. EPA. While an initial version of the primacy agreement did not list the
22 11 exempted aquifers, a subsequent version of the primacy agreement exempted the 11 aquifers. This
23 subsequent primacy agreement has been the basis for DOGGR's regulation of Class II injection wells
24 since 1983, and the U.S. EPA even wrote a letter to industry associations in 1985 clarifying which
25 aquifers were exempt by attaching the list of exempted aquifers from the subsequent primacy
26 agreement. Regardless, DOGGR only approved projects that met the agency's strict criteria for
27 demonstrating the injection would not "endanger" potential sources of drinking water pursuant to the
28 SDWA. Many of the project approvals FM O&G currently operates under are in areas where DOGGR
determined that the productive hydrocarbon limits of the oil fields extended beyond the limits as they

1 were known in 1983.

2 9. On April 2, 2015, DOGGR promulgated its emergency Aquifer Exemption Compliance
3 Schedule Regulations. The regulations were the culmination of extensive discussions and an agreement
4 between U.S. EPA, DOGGR, and the State Water Resources Control Board ("SWRCB") on an
5 approved plan to allow U.S. EPA and the SWRCB an opportunity to review "non-endangerment"
6 determinations made by DOGGR since acquiring primacy. DOGGR has acknowledged that in nearly
7 all cases, the injection is occurring in hydrocarbon-bearing reservoirs where no potentially viable
8 sources of drinking water exist. As part of its ongoing review of previous injection related approvals,
9 DOGGR has not identified a single instance where injection activities have caused contamination of
10 drinking water.

11 10. Pursuant to negotiations with the U.S. EPA, DOGGR has undertaken a review process to
12 examine UIC projects that have previously been permitted in (1) the 11 aquifers that have been
13 historically treated as exempt by DOGGR and U.S. EPA, and (2) aquifers where the hydrocarbon
14 productive limits of the oil fields are now known to exceed the boundaries established in 1983. Even
15 though these areas are now being treated as "non-exempt", they have historically been treated as exempt
16 based on different interpretations of the primacy agreement and clarifying documents issued by the U.S.
17 EPA.

18 11. According to a letter from DOGGR to U.S. EPA on February 6, 2015, the current review
19 examines three categories of wells: Category 1, "Class II water disposal wells injecting into non-
20 exempt, non-hydrocarbon-bearing aquifers or aquifers historically treated as exempt"; Category 2,
21 "Class II enhanced oil recovery (EOR) wells injecting into non-exempt, hydrocarbon-bearing aquifers";
22 and Category 3, "Class II water disposal and EOR wells that are inside surface boundaries of exempted
23 waters, but that may nevertheless be injecting into a zone not exempted in the primacy agreement." The
24 review covers over 30,000 Class II injection wells. As of May 15, 2015, DOGGR has completed an
25 initial review of Category 1 wells, while review of Category 2 and Category 3 will be completed in
26 early 2016.

27 12. On February 6, 2015, shortly before promulgating its emergency Aquifer Exemption
28 Compliance Schedule Regulations, DOGGR disclosed a list of 2,553 wells injecting into aquifers

1 purportedly lacking exemptions. The list included review of Category 1 and Category 2 wells.
2 DOGGR identified 532 water disposal wells and 2,021 enhance oil recovery wells. The majority of
3 these wells are located in areas where the known hydrocarbon productive limits has been proven to
4 extend beyond what was originally known in 1983.

5 13. On May 15, 2015, DOGGR announced an update to its list of wells injecting into
6 aquifers purportedly lacking exemptions. As part of a document entitled "Attachment F", DOGGR
7 identified approximately 3,600 steam wells that it's records indicate may not be associated with a
8 permitted injection project.

9 14. FM O&G operates nineteen (19) of the Category 1 water disposal wells identified by
10 DOGGR.

11 15. FM O&G operates five-hundred eight six (586) of the Category 2 enhanced oil recovery
12 wells identified by DOGGR.

13 16. FM O&G operates six hundred fifty (650) of the wells identified on the Attachment F
14 document issued by DOGGR on May 15, 2015.

15 17. FM O&G is reviewing the list of wells identified by DOGGR on the Attachment F
16 document and is providing input to DOGGR accordingly. Of the 650 wells identified on the
17 Attachment F list, FM O&G believes all or most of the wells are associated with a permitted injection
18 project. Many of the wells contained on the list are simply steamed in a manner that supplements
19 operation of the permitted steamflood. FM O&G will be providing information to DOGGR identifying
20 the specific projects the wells are tied to.

21 18. On May 7, 2015, the Center for Biological Diversity and the Sierra Club (collectively,
22 "Petitioners") filed their Complaint for Declaratory and Injunctive Relief and Verified Petition for Writ
23 of Mandate ("Petition") against DOGGR. Petitioners seek declaratory relief voiding the Aquifer
24 Exemption Compliance Schedule Regulations promulgated and implemented by DOGGR, injunctive
25 relief rescinding the Aquifer Exemption Compliance Schedule Regulations, and a writ of mandate
26 compelling DOGGR to prohibit Class II well injections into aquifers purportedly lacking exemptions.
27 (Petition at p. 16, ¶¶ 1-7.)

28 19. On May 14, 2015, Petitioners filed their Motion for Preliminary Injunction. The Motion

1 for Preliminary Injunction asks this Court to order DOGGR to immediately prohibit underground
2 injection into aquifers purportedly lacking exemptions. (Motion at pp. 1:28–2–9; Proposed Order.)

3 20. If granted, the Motion for Preliminary Injunction would cause direct, immediate, and
4 significant economic harm to FM O&G. The broad effect of the injunction proposed by Petitioners
5 would be exponentially magnified by the abrupt nature its imposition. The injunction would require the
6 shutdown of other wells, facilities, and operations associated with injection activities.

7 21. FM O&G has made substantial capital investments in the underground injection wells
8 targeted for prohibition by the Motion for Preliminary Injunction. FM O&G estimates its investment in
9 the injection wells and attendant facilities that would be prohibited by Petitioners' proposed preliminary
10 injunction exceeds \$617 million.

11 22. If the Motion for Preliminary Injunction is granted, FM O&G would be forced to endure
12 a severe draw down in its current production levels. FM O&G estimates that more than 855 production
13 wells would be directly or indirectly impacted if the Motion was granted. Many of these wells would be
14 shut in altogether due to the lack of thermal injection. Based on an updated and revised production and
15 reservoir analysis that was conducted on June 18, 2015, FM O&G estimates it would lose more than
16 5,500 barrels of oil per day ("BOPD") in first six weeks of a shut-in order, with this number gradually
17 increasing to a total approximate range of anywhere between 10,000 – 13,000 BOPD within twelve
18 months of a shut-in order, depending on how the reservoir responds to the lack of thermal injection.
19 Furthermore, FM O&G would be forced to curtail plans to implement future drilling projects. FM O&G
20 has obtained Project Approval Letters ("PALs") from DOGGR authorizing it to proceed with new
21 injection wells. Under the regulations, FM O&G is authorized to proceed with drilling in those areas
22 that a PAL was previously issued. The drilling opportunities FM O&G would be forced to curtail are
23 located in areas with long standing active oil production and injection operations. If the Motion for
24 Preliminary Injunction is granted, it would adversely affect approximately 80% of FM O&G's future
25 new well opportunities.

26 23. If the Motion for Preliminary Injunction is granted, FM O&G would suffer immediate
27 and significant economic harm. It is estimated that up to 30% of FM O&G's current daily oil and gas
28 production operations within California could potentially be adversely impacted within one year if the

1 Motion for Preliminary Injunction is granted.

2 24. If the Motion for Preliminary Injunction is granted, FM O&G estimates it could incur
3 more than \$351,000/day of economic harm once the full estimated effects of the production impacts
4 have taken effect.

5 I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct.

7 Executed on June 19, 2015 in Bakersfield, California.

8
9 By: 

John Martini

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